IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Crl.Rev.Pet.No. 396 of 2000()

CRA.261/1998 of SESSIONS COURT, THRISSUR
CC.579/1997 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER/APPELLANT/ACCUSED:

RADHAKRISHNAN,AGED 40 YEARS, S/O.ALINGAL MONI,
KUZHALMANNAM VILLAGE, DESOM, ALATHUR TALUK.

BY ADV. SRI.RAJIT

RESPONDENTS/RESPONDENTS/COMPLAINANT AND STATE:

1.PRAJITH,AGED ABOUT 29 YEARS, S/O.KOKKANTHRA RAGHAVAN,
CHAZHOOR VILLAGE, DESOM, THRISSUR TALUK,
POWER OF ATTORNEY HOLDER OF MAYOORAM FINANCE
CORPORATION.

2.STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.R.PADMARAJ FOR R1
SRI.VINOD MADHAVAN
PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal R.P.No.396 OF 2000 ()

Dated this the 26th day of September, 2007

O R D E R

Petitioner is the accused in C.C.No.579/1997 before the Judicial First Class Magistrate Court, Chavakkad for the offence punishable under Section 138 of the Negotiable Instruments Act. The allegation was that petitioner issued a cheque for Rs.37,800/- and the same was returned dishonoured due to 'insufficiency of funds'. The cheque was issued in discharge of a legally enforceable debt. Complainant was examined as PW1 and he proved the case that cheque was issued for a legally enforceable debt and he filed the complaint after complying the statutory formalities like exchanging of notice etc. PW2, Bank Manager submitted that cheque was dishonoured for insufficiency of funds. PW3 is the official of the collecting banks. Ext.P2 is the concerned cheque and Ext.P3 is the memo of Palakkad District Co-operative Bank and Ext.P4 is the memo of Nedungadi Bank. Ext.P5 is the notice and Ext.P6 is the

acknowledgment card which shows that notice was sent in time. Ext.P1 is the promissory note which support the case of PW1 that cheque was issued for a legally enforceable debt. It is also admitted that accused received notice and did not sent any reply notice. According to 313 statement, Ext.P2 cheque was issued for a due repayment of a loan availed by his wife from the complainant. That itself is sufficient consideration and in any event, appellant has failed to rebut the presumption under Section 139 of the N.I.Act. I see no ground to interfere in the conviction fixed by the courts below in a revisional jurisdiction. Sentence imposed was Simple imprisonment for three months and a compensation amount of Rs.37,800/-. There was also a direction that in default of payment to undergo simple imprisonment for another three months and PW1 was authorised to collect the amount on behalf of the corporation as he was the Power of attorney holder in a finance institution. Three months imprisonment was modified by the appellate court and he was directed to undergo imprisonment for a period of five days and to pay a fine of Rs.42,000/- and the amount if realised, Rs.39,000/- is directed to be paid as compensation to PW1. The operative part of the appellate court judgment is as follows:

" a) This appeal is allowed in part;

b) The verdict of guilty and conviction of the appellant under Section 138 of the Negotiable Insutruments Act are upheld;

c) But the sentence imposed on the appellant by the learned Magistrate under Section 138 of the N.I.Act is modified and reduced. In supersession of the sentence imposed by the Learned Magistrate the appellant is sentenced under Section 138 of the N.I.Act to undergo S.I. for a period of 5 days.

d) The appellant is further directed under S.357 (3) Cr.P.C. to pay an amount of Rs.42,000/- as compensation and in default of payment to undergo S.I. for a period of 3 months. The amount if realised Rs.39,000/- shall be paid to the complainant as compensation and the balance shall be credited to the State for the loss suffered by it in terms of Judicial time and resources spent by it for the resolution of controversy between the parties."

Maximum leniency was also given by the appellate court and I see no ground to interfere in the conviction and sentence passed by the courts below and accordingly this revision petition is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.R.P.396 OF 2000

O R D E R

26th September, 2007